

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:)
BellSouth Telecommunications, Inc.'s)
Entry Into Long Distance (InterLATA))
Service in Tennessee Pursuant to)
Section 271 of the Telecommunications)
Act of 1996)

Docket No.: 97-00309

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OFFICE OF
EXECUTIVE SECRETARY

**MOTION OF CLECS TO COMPEL RESPONSE BY BELL SOUTH
TELECOMMUNICATIONS, INC. TO THE CONSOLIDATED CLEC 1st DATA
REQUESTS**

Pursuant to Authority Rule 1220-1-2.11(9) and Rule 37.01 of the Tennessee Rules of Civil Procedure, as well as the Tennessee Regulatory Authority's ("Authority's") May 8, 2002 and May 24, 2002 Notices regarding discovery, the Southeastern Competitive Carriers Association ("SECCA"); AT&T Communications of the South Central States, LLC and TCG MidSouth, Inc. (collectively "AT&T"); MCI WorldCom Communications, Inc., MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc. (collectively "WorldCom"); hereby request that the Authority compel BellSouth Telecommunications, Inc. ("BellSouth") to provide full and complete responses to Data Request Item Nos. 7, 15, 44, 71, and 105 from the Consolidated CLEC 1st Data Requests filed and served on BellSouth on May 23, 2002.¹

¹ Pursuant to Authority Rule 1220-1-2.11(9), copies of these data requests and BellSouth's responses are attached as Exhibit 1.

ARGUMENT

Discovery in Tennessee is generally governed by Rule 26.02 of the Tennessee Rules of Civil Procedure, which provides that:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . .

Pursuant to Rule 37, a party may move for an order compelling a response to a question or request that another party has failed to answer. Tenn. R. Civ. P. 37.01(2). Under Tennessee discovery rules, any answer that is evasive or incomplete is treated as a failure to answer the discovery request. Tenn. R. Civ. P. 37.01(3). By preventing a party who has discoverable information from making evasive, incomplete or untimely responses to requests for discovery, the rules governing discovery in Tennessee are intended to eliminate the element of surprise. *See, e.g., Hood v. Roadtec, Inc.*, 785 S.W.2d 359, 362 (Tenn. Ct. App. 1989); *Ingram v. Phillips*, 684 S.W.2d 954, 958 (Tenn. Ct. App. 1984). As one Tennessee court explained, “[t]he purpose of discovery is to bring out the facts prior to trial so the parties will be better equipped to decide what is actually at issue.” *Ingram*, 684 S.W.2d at 958.

In this proceeding, BellSouth has failed to adequately respond to five CLEC Consolidated Data Requests.² Specifically, BellSouth provided no response or an incomplete response to CLEC Consolidated 1st Data Request Item Nos. 7, 15, 44, 71, and 105. As explained

² The CLECs note that BellSouth objects to several of the CLEC Consolidated 1st Data Requests concerning OSS issues on relevancy grounds because, in BellSouth’s view, the “provision of nondiscriminatory access to OSS currently is not an issue in this docket.” *E.g.*, BellSouth’s Response to CLEC Consolidated 1st Data Requests Item No. 47 (May 23, 2002). Because BellSouth voluntarily responded to each of the requests dealing with OSS, BellSouth’s objections are moot. BellSouth, however, also asserts that it “will not respond to additional discovery on OSS in this or any other docket.” *Id.* Should BellSouth’s relevancy objections become ripe for review in the future, the CLECs will respond at that time.

in greater detail below, adequate responses to each of these outstanding data requests are necessary so that AT&T and other CLECs can properly determine what items are at issue in this proceeding.

Data Request Item No. 7 - As part of its Section 271 showing, BellSouth has the burden of demonstrating that it provides interconnection to CLECs equal in quality to that which it provides itself. Interconnection involves the connection of trunks between CLEC switches and BellSouth switches that allows the completion of calls between CLEC customers and BellSouth customers, regardless of which party the call originates from. Trunks carry the calls from switch to switch within the network. When a trunk group is filled to capacity, and no alternative trunks are available, additional simultaneous calls are blocked. Hence, if sufficient trunking is not available, calls between CLEC customers and BellSouth customers will experience high levels of blocking. Data Request Item No. 7 requests information regarding the number of times BellSouth disconnected interconnection trunks since July 2001 and the circumstances surrounding the disconnection. BellSouth indicated that it is compiling its response to Data Request Item No. 7 and "will supplement this response as soon as possible." AT&T and other CLECs need this information immediately in order to determine whether trunk blockage continues to be a problem and should be an issue raised in these proceedings.

Data Request Item No. 15 - In order to properly analyze whether BellSouth provides nondiscriminatory access to its OSS in Tennessee, CLECs must have access to BellSouth's actual Tennessee performance data. On May 14, 2002 the Authority adopted a permanent set of

performance measurements for Tennessee.³ Under the Authority's Order, BellSouth must make modifications to its systems, processes, and procedures in order to disaggregate data by product for certain measures and provide state-specific data for other measures.⁴ Data Request Item No. 15 requests information concerning these modifications. In its response, BellSouth has indicated that it is "still in the process of developing the requirements for the changes ordered by the TRA."⁵

Disaggregated and state-specific data are critical to the CLECs' analysis of BellSouth's performance in Tennessee. In order to properly analyze BellSouth's performance, CLECs need access to disaggregated data because "[d]isaggregation provides specific information that might otherwise be lost in an aggregate measurement."⁶ As the Authority has explained, "disaggregation is useful when trying to pinpoint a problem . . . because it ensures that poor performance in one product type is not aggregated with superior service of another unrelated product type."⁷ Moreover, CLECs also require state-specific data in order to properly analyze

³ *Order Setting Performance Measurements, Benchmarks and Enforcement Mechanisms*, Dckt. No. 01-00193, at 32-34 (May 14, 2002). The benchmarks for the performance measurements adopted by the Authority represent "levels of service that BellSouth must achieve in order to meet the requirement of nondiscriminatory access." *Id.* at 23.

⁴ *BellSouth Telecommunications, Inc.'s Motion for Reconsideration*, Dckt. No. 01-00193, at 20-21 (May 29, 2002).

⁵ BellSouth's Motion for Reconsideration of the Authority's *Order Setting Performance Measurements, Benchmarks, and Enforcement Mechanisms* was considered at the June 18, 2002 Directors' Conference. At that conference the Authority granted BellSouth's Motion in part and denied in part. See Excerpt of Directors' Conference, Dckt. No. 01-00193 (June 18, 2002). Regarding implementation of modifications by BellSouth, the Authority determined that BellSouth has 90 days to implement modifications for state-specific reporting, and 6 months from the date of the final order for measures requiring "extensive modification." *Id.* at 21-22. Where the Authority adopted different levels of disaggregation, those modifications will be considered "extensive modifications." *Id.*

⁶ *Order Setting Performance Measurements, Benchmarks and Enforcement Mechanisms*, Dckt. No. 01-00193, at 12 (May 14, 2002).

⁷ *Id.*

BellSouth's performance *in Tennessee*.⁸ In light of BellSouth's past history of subverting discovery requests for such critical information, the Authority should compel BellSouth to respond to Data Request Item No. 15 immediately.

Data Request Item No. 44 - Item No. 44 requests state-specific data for the volume of LSRs (segregated by manual and electronic) and the volume of issued service orders by interface (i.e. LENS, TAG, EDI, and all interfaces) for five specific categories: (1) LNP; (2) UNE; (3) Business Resale; (4) Residence Resale; and (5) Total (categories combined) for the time period January 2002 to April 2002. In its response, BellSouth provided *aggregate* data for the volume of LSRs submitted manually and the corresponding volume of issued service orders. BellSouth's response is also not broken down by interface (i.e. LENS, TAG, EDI, and all interfaces) as requested. BellSouth indicated that "[s]tate level details are currently being developed and a supplemental response will be provided as soon as possible." Because disaggregated and state-specific data is critical to the AT&T's analysis of BellSouth's performance, as discussed above, the Authority should order BellSouth to provide a complete response to Data Request Item No. 44 immediately.

Data Request Item No. 71 - Item No. 71 requests very specific information regarding precisely what event triggers the notification of BellSouth's retail units that a customer has left BellSouth and precisely when this happens. BellSouth responded with its standard objection, used throughout their responses, regarding relevancy and also provided the unusual answer: "The wholesale PMAP web site does not provide a loss notification report to BellSouth's retail units." BellSouth's response wholly ignores the question which seeks information regarding how

⁸ See generally *Order Resolving Phase I Issues of Regionality*, Dckt. No. 01-00362 (June 21, 2002).

BellSouth retail does become aware of customers leaving. The issue of how BellSouth retail becomes aware of the loss of customers is relevant to this proceeding inasmuch as inappropriate winback activities have been alleged by a number of CLECs. Determining exactly how BellSouth retail units become aware of the loss of customers is imperative to seeing whether inappropriate, discriminatory communications are taking place within BellSouth that could have the effect of greatly harming local competition.

Data Request Item No. 105 - Item No. 105 requests information pertaining to BellSouth's marketing or sales programs in effect in Tennessee as of May 1, 2002 in which BellSouth offers a non-regulated service or product linked to the purchase of a regulated telecommunications service. BellSouth has indicated that it is "compiling its response and will supplement this response as soon as possible." This information is necessary in order for AT&T to analyze whether BellSouth is acting in accordance with the public interest. Indeed certain of BellSouth's unlawful promotional efforts have already come before the Authority in Docket No. 01-00868. Thus, the Authority should order BellSouth to respond to this request.

CONCLUSION

The purpose of discovery is to bring out the facts beforehand "so the parties will be better equipped to decide what is actually at issue." *Ingram*, 684 S.W.2d at 958. Without adequate responses to Data Request Item Nos. 7, 15, 44, 71. and 105, CLECs cannot make an informed determination of the scope of the issues in this proceeding. Accordingly, the Authority should order BellSouth to respond immediately to all outstanding data requests. If BellSouth is unable to provide an adequate response at this time, it should provide the Authority a detailed timeline for when it will provide a complete response.

For the foregoing reasons, the CLECs respectfully request that the Authority order BellSouth to provide full and complete responses to each of the enumerated data requests.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows on this 28th day of June, 2002:

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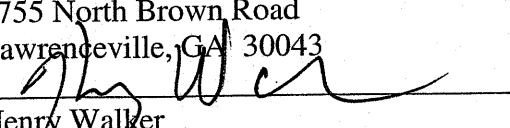
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BellSouth Telecommunications, Inc.
Tennessee Regulatory Authority
Docket No. 97-00309
Consolidated CLEC 1st Data Requests
May 23, 2002
Item No. 7
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REQUEST: From the time period July 2001 to the present, please describe:

1. How many separate times BellSouth disconnected interconnection trunks in Tennessee and each of the other states in BellSouth's region. This includes reducing the size of existing trunk groups by disconnecting members of the trunk group;
2. In what specific locations did BellSouth disconnect interconnection trunks in Tennessee and each of the other states in BellSouth's region;
3. In the above instances, how many days prior to the disconnect did BellSouth notify AT&T that the disconnect would occur;
4. In how many of these instances did BellSouth await a response from AT&T that the disconnect was appropriate?
5. What method of communication does BellSouth utilize to communicate such disconnect activities to AT&T?

RESPONSE: BellSouth is compiling its response and will supplement this response as soon as possible.

BellSouth Telecommunications, Inc.
Tennessee Regulatory Authority
Docket No. 97-00309
Consolidated CLEC 1st Data Requests
May 23, 2002
Item No. 15
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REQUEST: Please identify all modifications to BellSouth's systems, processes, and procedures necessary to collect and present data in reports that will comply with the permanent set of performance measurements adopted by the Tennessee regulatory Authority in Docket No. 01-00193 and

- (a) provide a detailed schedule for completing each modification listed;
- (b) describe the recourses necessary to complete each modification listed;
an
- (c) if any listed modifications cannot be completed within 30 days, please state the reason(s) for the delay in completing that modification.

RESPONSE:

Please refer to BellSouth's Motion for Reconsideration filed in Docket No. 01-00193 on May 29, 2002, provided in Request for Documents, Item No. 1. BellSouth is still in the process of developing the requirements for the changes ordered by the TRA as described in paragraph III of the Motion.

BellSouth Telecommunications, Inc.
Tennessee Regulatory Authority
Docket No. 97-00309
Consolidated CLEC 1st Data Requests
May 23, 2002
Item No. 44
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REQUEST: From January 2002 to April 2002, for each individual state in BellSouth's region and for the BellSouth region in total, please identify the volume of LSRs (segregated by manual and electronic) and the volume of issued service orders by interface (i.e., LENS, TAG, EDI, and all interfaces) for the following categories:

- a. LNP;
- b. UNE;
- c. Business Resale;
- d. Residence Resale; and
- e. Total (i.e., UNE, Business Resale, and Residential Resale combined)

RESPONSE: Please find attached BellSouth's aggregate volume for LSRs submitted manually from January 2002 to April 2002. The aggregate volumes include the following categories: LNP, UNE, Business Resale, and Residence Resale. Also included are the service order volumes for the respective categories.

State level details are currently being developed and a supplemental response will be provided as soon as possible.

Please see response to Data Request No. 43 for the volume of LSRs submitted electronically and the volume of issued service orders as requested.

BellSouth Telecommunications, Inc.
Tennessee Regulatory Authority
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Consolidated CLEC 1st Data Requests
May 23, 2002
Item No. 71
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REQUEST: What event (Service Order Completion, CSR update, etc.) triggers the notification of BellSouth retail that a customer has left and when does this happen (e.g. FOC, SOC)?

RESPONSE: BellSouth objects to this request on the grounds that it is not relevant to the issues in this proceeding and not relevant to the issues in this proceeding and not calculated to lead to the discovery of admissible evidence. BellSouth's provision of nondiscriminatory access to OSS currently is not an issue in this docket. As the CLECs themselves argued, "BellSouth's 271 filing should be suspended until such time as the Authority has completed Phase II of [the OSS docket] and, determined whether BellSouth provides nondiscriminatory access to its OSS in Tennessee." Response to Proposed Hearing Dates, Docket No. 97-00309, 6/6/02, at 6. Notwithstanding its objection, in an effort to avoid discovery disputes, BellSouth has voluntarily chosen to respond to this request, given that the CLECs chose to conduct OSS discovery in this docket. However, BellSouth will not respond to additional discovery on OSS in this or any other docket.

The wholesale pmap web site does not provide a loss notification report to BellSouth's retail units.

BellSouth Telecommunications, Inc.
Tennessee Regulatory Authority
Docket No. 97-00309
Consolidated CLEC 1st Data Requests
May 23, 2002
Item No. 105
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REQUEST: Describe every marketing or sales program in effect in Tennessee as of May 1, 2002 in which BellSouth or a BellSouth affiliate offers a non-regulated service or product which is linked to, or bundled with, the purchase of a regulated telecommunications service. This question is intended to include, but not be limited to, offerings in which:

- a. the purchaser of a regulated service is entitled to obtain a non-regulated service or product at a cheaper price than would otherwise be available to the purchaser.
- b. the purchaser of a non-regulated service or product is entitled to obtain a regulated service at a cheaper price than would otherwise be available to the purchaser.
- c. the purchaser of a regulated service receives any item of value other than as described in BellSouth's tariffs.

RESPONSE: BellSouth is compiling its response and will supplement this response as soon as possible